

Appeal from a decision of the California State Office, Bureau of Land Management, denying petition for class I reinstatement of oil and gas lease CA 12818.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

A petition for reinstatement of a noncompetitive oil and gas lease filed pursuant to sec. 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. | 188(c) (1982), is properly denied where the payment was mailed to BLM after the anniversary due date and the lessee has not demonstrated that the misplacement of files during a business move or an illness asserted as justification for late payment is the proximate cause of late payment.

APPEARANCES: Raymond H. Keeve, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Raymond H. Keeve appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated August 4, 1986, denying his petition for class I reinstatement of noncompetitive oil and gas lease CA 12818. The decision also notified him of the opportunity to seek class II reinstatement and the terms and conditions under which class II reinstatement would be available.

Effective May 1, 1984, BLM issued lease CA 12818 to appellant for 440 acres located in secs. 23 and 24, T. 32 S., R. 19 E., Mount Diablo Meridian, San Luis Obispo County, California. By notice dated June 30, 1986, BLM informed appellant that his lease had terminated on May 1, 1986, the anniversary date of the lease, for failure to pay the annual rental on or before that date. The envelope in which appellant mailed his rental was postmarked May 12, 1986. BLM received appellant's remittance on May 14, 1986. BLM also informed appellant of this right to petition for reinstatement of the lease pursuant to 30 U.S.C. | 188(c) (1982) (class I reinstatement) and pursuant to 30 U.S.C. | 188(d) (1982) (class II reinstatement). BLM's termination notice set forth the conditions for reinstatement under both class I and class II.

In his petition for reinstatement, appellant explained that his check for the rental was dated and filed away to be paid on time. Appellant stated that during a business move his filing box was misplaced inadvertently and requested reinstatement of his lease.

In its decision, BLM denied appellant's petition for class I reinstatement because appellant did not show that the failure to timely pay the rental was either justifiable or not due to a lack of reasonable diligence, as required by 43 CFR 3108.2-2. BLM also noted that appellant's petition was subject to denial because he had failed to submit the required rental (\$440) with his petition. However, BLM did find that appellant's failure to timely pay was inadvertent and that the lease could be reinstated pursuant to the class II reinstatement terms and conditions of 43 CFR 3108.2-3. The decision offered reinstatement with acceptance of those terms and conditions, allowing appellant until September 6, 1986, 60 days from receipt of the termination notice, to meet the conditions.

On appeal, appellant asserts that his failure to make a timely rental payment was not due solely to misplacement of records, but to a serious back ailment. Appellant explains that he was bedridden and not in his office for 2 weeks prior to the planned mailing date of rental payment. According to appellant, his wife mailed the rental payment when he was well enough to instruct her to do so. Appellant states that the payment delay was due to a bedridden-sedated illness caused by a recurring degenerate spine injury.

Appellant adds that a \$440 check did not accompany the reinstatement petition because the instructions did not indicate a "second" payment was due at the time of filing the petition. Appellant reasons that BLM still retains his original payment and there was no reason to send an additional payment.

[1] Upon the failure of the lessee to pay the annual rental on or before the anniversary date of any lease on which there is no well cap-able of producing oil or gas in paying quantities, the lease terminated automatically by operation of law. 30 U.S.C. | 188(b) (1982); 43 CFR 3108.2-1. Congress has enacted two provisions for reinstating oil and gas leases which have automatically terminated pursuant to 30 U.S.C. | 188(b) (1982). To qualify for class I reinstatement under 30 U.S.C. | 188(c) (1982), the lessee must have paid or tendered the rental within 20 days after the anniversary date, and he must establish that his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

We will first consider whether appellant has shown his failure to timely pay the rental was not due to a lack of reasonable diligence. The anniversary date of the lease was May 1, 1986. The envelope in which appellant mailed the rental was postmarked May 12, 1986. It is well established that mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. William R. Barthold, 98 IBLA 293, 295 (1987); Dominic D. Demicco, 92 IBLA 378, 379 (1986); Ann L. Rose, 92 IBLA 308, 310 (1986); Melvin P. Clarke, 90 IBLA 95, 98 (1985).

The next question is whether appellant's late payment was justifiable. Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981); Joanne F. Bechtel, 76 IBLA 1 (1983). The Board has held that the inadvertent misplacement of office records during a change in office location does not justify late payment. David E. Cooley, Jr., 62 IBLA 87 (1982). See also Leo M. Krenzler, 82 IBLA 205 (1984); NP Energy Corp., 72 IBLA 34 (1983).

Appellant asserts that his late payment was not due solely to the misplacement of business records but rather to a serious illness. Appellant states he was bedridden and sedated prior to the anniversary date. In addition to the fact that extenuating circumstances must be proximate in time to the lease anniversary date, such circumstances must be the "causative factor" in the failure to exercise reasonable diligence in mailing the rental payment. Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed, Samuel v. Morton, Civ. No. CV-74-1112-EC (C.D. Calif. 1975). In Joanne F. Bechtel, supra at 3, the Board discussed two cases in which it held that illness justified late payment:

[I]n Billy Wright, 29 IBLA 81 (1977), we held that the illness of the appellant's brother, who was suffering with terminal cancer and subsequently died, during August 1976 was a circumstance which justified the appellant's failure to pay the annual rental on the lease anniversary date, September 1, 1976. We noted that because the appellant was "distracted during this time * * * [he] was unable to give full attention to his business affairs." Id. at 82. Similarly, in C. H. Winters, [34 IBLA 350 (1978)] we held that the illness of a friend, whom the appellant visited on an out-of-town business trip, stayed with, and cared for until November 1, 1977, the lease anniversary date, was a circumstance which justified the late rental payment.

In William Branscome, 81 IBLA 235 (1984), the Board also discussed these two cases and noted that "[i]n both instances, the illness had so disrupted the lessee's normal routine that the party petitioning for reinstatement was unable to conduct his usual affairs." Id. at 237. Therein we stated:

An appellant who wishes to establish that the untimely payment was caused by circumstances beyond his control must substantiate this allegation with sufficient proof such that this Board can conclude that the circumstances actually existed and were the proximate cause for the tardy payment. See 43 CFR 3108.2-1(c)(2).

Id. at 237.

In the present case, we have only sketchy information concerning appellant's illness. If his illness was serious, he was presumably under a doctor's care and should have submitted a doctor's verification of his illness.

See Larremore Petroleum Partnership, 94 IBLA 30, 32 (1986). We cannot accept broad unsupported allegations because to do so invites abuse of the reinstatement regulations. Id. at 32, citing William F. Branscome, *supra* at 237. See also, Ram Petroleum, Inc., *supra*. Therefore, we find that appellant has not shown the failure to make timely payments was proximately caused by circumstances outside his control and hence, justifiable. We conclude that BLM properly denied appellant's petition for reinstatement.

We find also that the petition is subject to denial because appellant did not submit the required rental of \$440 with his petition. Appellant contends he did not submit the \$440 payment with his petition because the Government "retains my original payment and there was no clear reason to send an additional payment." (Emphasis in original.)

As explained by BLM in its decision, appellant's assumption that BLM is retaining his late payment is not correct. BLM stated that if appellant had not already received a check representing the return of his late payment, he should receive such a check in the near future. BLM noted that the refund was specified in the Oil and Gas Lease Termination Notice. The fact that appellant was entitled to a refund but had not yet received it, does not justify an assumption that BLM will credit the refund money to cover other required payments. See Wilfred Plomis, 51 IBLA 125 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge